IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 728 OF 2006

Mr.Somnath S. Pawar ...Petitioner
V/s.
The State of Maharashtra & Ors. ...Respondents

Mr.Rajendra Sorankar for the Petitioner.
Mr.Y.M. Nakhawa, APP for State-Respondent No.1
Mr.P.R. Dave for Respondent Nos.2 to 4.

CORAM : V.M. KANADE, J.

DATED : AUGUST 27, 2007

P.C. :-

. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2. The petitioner is the original complainant who has filed complaint against the respondent and others for offence punishable under Section 138 of the Negotiable Instruments Act. After process was issued by the Magistrate, the respondent herein preferred a revision application in the Sessions Court and alleged that he was not to be prosecuted under the provisions of Section 138 read with Section 141 of the Negotiable Instruments Act since admittedly, the only role which was played by the respondent was alleged to be the

guarantor and the agreement which was executed between the parties. The Sessions Court after perusing the matter on record set aside the order of issuance of process. Against this order, the petitioner has preferred this writ petition under Article 227 of the Constitution of India.

3. It is submitted that the respondent and the other accused has committed fraud and misappropriated the amount which was paid by the petitioner herein. He submitted that separate complaint has been filed against the respondent under Section 420 read with other provisions of IPC which are pending in the trial Court. It is submitted that therefore, the order passed by the Sessions Court was liable to be set aside since it was not open for the Sessions Court to examine the material on record for the purpose of deciding whether offence as punishable under Section 138 of the Negotiable Instruments Act was made out or not. This submission cannot be accepted. It is an admitted position that the respondent is neither the signatory of the said cheque nor was the partner of the firm through whom the said

cheque was issued. At the highest the respondent can be termed to be a guarantor on behalf of accused nos.1 and 2. That being the position, respondent no.1 cannot be prosecuted under the provisions of Section 138. In my view, there is no infirmity in the order passed by the Sessions Court. Be that as it may, the fact remains that the respondent being a guarantor could not have been prosecuted under Section 138. There is no reason, therefore, to interfere with the impugned order.

4. Writ Petition is, accordingly, dismissed.

5. The petitioner is at liberty to prosecute the respondent nos.2 to 4 for the other alleged offences for which they have committed by him.

6. The trial Court shall not be influenced by any observations made by this Court while disposing of this writ petition.

(V.M. KANADE, J.)